IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8297 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIKANT MOHANLAL DAWDA

Versus

SERVO DRIVES PVT LTD.

Appearance:

MR KM PARIKH for Petitioner

MR KM PATEL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/06/1999

ORAL JUDGEMENT

The prayer of the petitioner in this writ petition is for quashing judgement and award dated 12.1.1998 passed by the Labour Court vide Annexure-A to the writ petition.

The brief facts giving rise to this petition are that the petitioner was working as machine shop Supervisor in the Machine Shop Department of the respondent Company since 21.3.1984 and was drawing

monthly salary of Rs. 1750/- inclusive of all allowances. He was appointed on a probation for six months and was thereafter confirmed as regular employee of the respondent and since March, 1984 he was working as confirmed machine shop Supervisor. The respondent Company dismissed the petitioner from service on 20.6.1988. The grievance of the petitioner is that he was dismissed without following due process of law and without following the provisions of the Industrial Disputes Act, 1947 (for short `Act'). According to him no show cause notice was issued to him and no departmental enquiry was conducted. Consequently according to the petitioner there was no justifiable reason for dismissing him. The petitioner raised industrial dispute under the provisions of the Act. The Assistant Labour Commissioner, Baroda, referred the dispute to the Labour Court for adjudication. On preliminary objection of the respondent, the Labour Court dismissed the reference by observing that the petitioner is not a workman within the meaning of Section 2(s) of the Act. It is this order of the Labour Court which is under challenge in this petition.

Learned counsel for the parties have been heard. The contention of the learned counsel for the petitioner is that the petitioner is a workman and the finding to the contrary recorded by the Labour Court is against weight of evidence and contrary to law and is also the result of non-application of mind to the material on record as well as to the definition of workman as contained in Section 2(s) of the Act. In order to appreciate this contention, the provisions of Section 2(s) of the Act quoted below have to be kept in mind.

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

It is therefore obvious from the above definition that under Section 2(s) of the Act a person will not be included in the definition of workman who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. It is actually this clause which was pressed into service by the Labour Court for coming to the conclusion that the petitioner is not a workman. The first thing to be kept in mind for applying the provisions of Section 2(s) of the Act is that the person should be employed in a supervisory capacity. The second condition is that he should be drawing wages exceeding one thousand six hundred rupees per mensem. The third condition is that such person may be exercising either by the nature of his duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The third condition of the sub-section (iv) may not attract because the petitioner was not employed to discharge mainly function of a managerial nature. Even according to the writ petition, he was employed as a machine shop Supervisor on probation for six months and was confirmed after completion of probationary period since March 1984 and was working as machine shop Supervisor. Therefore, it seems from the narration in the writ petition that the nature of duties of the petitioner was to look after the machine shop section of the respondent Company and to supervise the work of this section. He may be having technical knowledge in operating the machines of the section in which he is employed but he was also doing supervisory work which is obvious from the findings recorded by the Labour Court.

In para 6 of the award of the Labour Court it has

been mentioned, on the basis of the material on record as well as from the statement of the petitioner in examination-in-chief as well as in cross-examination, that the petitioner was appointed as machine shop Supervisor. Appointment letter was also considered by the Labour Court in which it found that the petitioner's appointment was as a machine shop Supervisor. The Labour court further found that the petitioner was paid salary of Rs. 1725/- which means his salary exceeded Rs. 1600/as is specified in Section 2(s) of the Act. The petitioner further stated before the Labour Court that he was being paid more allowance than the allowance paid to other workmen. He was thus working in supervisory capacity and his salary and allowance were not equal to the salary and allowance of other workmen who were working under him. He further stated that he used to fill in workmen's Confidential Report. Giving entry in the Confidential Report in writing is certainly work of supervisory nature and it cannot be said that it was a clerical work which was being done by the petitioner on the request of the workmen. Workmen had no access to the Confidential Report. He further stated that he was taking work from other workmen and he used to put remarks on the loan applications of the workmen. Taking work from other workmen and putting remarks on the loan applications of the workmen working under him indicate supervisory nature of the work which was being taken from the petitioner by the respondent. He also used to make endorsement on the leave application of the other workmen which cannot be said to be a mere clerical job. There is categorical finding of the Labour Court that the petitioner was appointed as Supervisor. Consequently, if a person was appointed as Supervisor and was looking after some work in the technical section in which he was posted and he was having technical knowledge, he cannot be said to be workman within the definition of Section 2(s) of the Act.

The learned counsel for the petitioner has contended that the finding of the Labour Court is not based upon the material on record and the statement of the petitioner has not been carefully considered by the Labour Court. I am unable to appreciate this contention. This court in exercise of jurisdiction under Article 226 of the Constitution of India will not sit in as court of appeal over the findings of the Labour Court. The Labour Court did consider the letter of appointment of the petitioner as well as his statement in examination-in-chief as well as in cross-examination. If upon consideration of such evidence, the Labour Court concluded that the petitioner was appointed as Supervisor

this court will be reluctant to interfere in such finding of fact recorded after proper appraisal of evidence on record.

Almost on identical facts this court in DIGVIJAY CEMENT CO. LTD. VS. CHANDRAVANI J.S. reported in 1998(2) G.L.H. 302 held that the petitioner in that case who was promoted in the shift machine plant as Supervisor was not a workman within the meaning of Section 2(s) of the Act and the finding of the Labour Court recorded on this score did not suffer from any error which could be corrected in exercise of extraordinary jurisdiction while considering the issue of writ of certiorari.

For the reasons given above, I do not find that judgement and award of the Labour Court suffers from any manifest error of law, lack of jurisdiction or non-application of mind to the evidence and material on record while recording the findings by it. On the face of finding of fact recorded by the Labour Court, provisions of Section 2(s)(iv) are attracted and as such the petitioner cannot be treated to be workman. Reference was therefore, rightly dismissed by the Labour Court. There is no merit in this writ petition which is hereby dismissed with no order as to costs.

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